itself parted with nothing at the time it received the bonds, and cannot therefore hold them as against the plaintiff. This is clearly an extension of the doctrine that one who takes property in nominal payment of an antecedent debt totally unconnected with the present transaction is not a purchaser for value. To maintain that rule is one thing; it is quite a different thing to say that one who pays for property in advance will be acting unconscientiously if he retains it when received.

The case is treated by the court as one of first impression, the only expression of opinion on the precise point which was found being a purely gratuitous *dictum* by Sir George Jessel, M. R., in *Mumford* v. *Stohwasser* (1874) L. R. 18 Eq. 556, 563, quoted with approval by Pomeroy, Eq. Jur. § 728, to the effect that a trustee "cannot, without receiving value at the time, by committing a breach of trust, deprive his own *cestui que trust* of his rights." Later English cases, however, have decided squarely that one who takes a legal title in discharge of an obligation to deliver the very property for which he has paid in advance, is a purchaser for value. *London and County Banking Co.* v. *Nixon* [1901] 2 Ch. 231, 257 (C. A.).

A possible explanation of such decisions as that in the principal case may be that the union of legal and equitable remedies in the same tribunals is reacting upon the substantive law, and that the judges are, perhaps unconsciously, beginning to regard equitable rights as if they were rights *in rem*. Certainly it is upon that theory alone that we can explain the argument of Judge FINCH in *Fairbanks* v. *Sargent* (1889) 117 N. Y. 320, 337, that a prior equitable assignee acquired not only the equitable, but the legal title—a legal title that was not lost by the transfer of the property from the assignor to one who had given no consideration for it,—or the statement to the like effect by Judge CULLEN, quoted *supra*.

LIMITATIONS AS TO AREA IN CONTRACTS IN RESTRAINT OF TRADE. —The authorities are unanimous that contracts in reasonable restraint of trade are valid and enforceable; but they do not agree as to what, even in cases that involve practically the same set of facts, a reasonable restraint of trade is. Thus the Supreme Court of Illinois has recently held that a contract which restrained one for twenty-five years from the manufacture or sale of "strawboards, boards and papers which will interfere with the sale and consumption of such boards and papers, in the State of Illinois," is void and unenforceable, *Union Strawboard Co.* v. *Bonfield* (Ill. 1901) 61 N. E. 1038; whereas the Court of Appeals of New York has held that a contract which restrained one for ninety-nine years from engaging in "the manufacture or sale of friction matches" anywhere in the United States save Nevada and Montana is valid and enforceable. *Diamond Match Co.* v. *Roeder* (1887) 106 N. Y. 473. In each case the court considered the same point, viz.,

within what territorial limits a person may be allowed to bind himself to refrain from pursuing a given trade or business. The question presents itself: Which doctrine is sound—that of the Illinois court, according to which "an agreement which applies to the whole State is void and cannot be enforced"; or that of the New York court, according to which such a contract is not necessarily void and unenforceable?

The answer to this question obviously does not involve any principle of the law of contracts, save this: that any contract to be valid and enforceable must seek results in harmony with the interests of the state; or, putting the matter negatively, no contract is valid and enforceable which contravenes the public policy of a state. It should be borne in mind, however, that "if there is one thing more than any other which public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that contracts when entered into freely and voluntarily shall be held good and shall be enforced by courts of justice." Sir George Jessel in *Printing Company* v. *Sampson* (1873) L. R. 19 Eq. Cas. 462, at p. 465. So contracts in restraint of trade should be upheld unless they tend unduly to deprive the state of the activities of its citizens, or to stifle competition and create monopolies, or in some other way to contravene the public interest. Harriman on Contracts, 2nd ed. § 216, *a*, and cases cited. It would therefore seem to follow that what a reasonable restraint as to territorial limits is, should be held to depend upon the nature of the trade or business to which the contract of restraint relates; and that if the best interests of a State are not prejudicially affected by a contract which restrains a citizen from pursuing a given occupation within its boundaries, the boundaries of the State should not be taken as a test of its validity. Chitty on Contracts, 13th ed. pp. 565–571.

That the best interests of a State, or even of a nation, need not necessarily be prejudicially affected by a contract that restrains a citizen, or a subject, from exercising a particular trade or business within its boundaries, is an economic truth. It has been recognized by the English House of Lords in the comparatively recent case of *Nordenfelt* v. *Maxim Nordenfelt Guns & Ammunition Co.* [1894] A. C. 535. The plaintiff there contracted not to trade anywhere, except on behalf of the company, as a manufacturer of guns or ammunition, for twenty-five years; the question was whether the contract was void and unenforceable because the restraint it imposed upon the plaintiff was unlimited as to space; and the court held that, having regard to the nature of the business and the limited number of customers for the guns and ammunition for war, which it was the main business of the company to supply, the contract was not wider than was necessary for the protection of the company, nor injurious to the public interests of Great Britain. See Chitty on Contracts, 13th ed. p. 566.

The English doctrine on this subject, then, is that a contract in restraint of trade otherwise valid is not void because unlimited as

to area. And the tendency of American courts is toward the same doctrine, *Beal* v. *Chase* (1875) 31 Mich. 490; although they seem reluctant to accept it in its entirety. *Diamond Match Co.* v. *Roeder*, *supra*. That it should be accepted in its entirety seems eminently reasonable. It may at least be said with Mr. Justice BRADLEY of the Supreme Court of the United States: "This country is substantially one, especially in all matters of trade and business; and it is manifest that cases may arise in which it would involve too narrow a view of the subject to condemn as invalid a contract not to carry on a particular business within a particular State." *Oregon Steam Nav. Co.* v. *Winsor* (1873) 20 Wall. 64, at p. 67.

THE NEBRASKA ANTI-TRUST ACTS. The case of the *Niagara Fire Insurance Co.* v. *Cornell* (1901) 110 Fed. 817, declares unconstitutional certain anti-trust legislation of Nebraska; but does not greatly aid in the solution of the vexed problems of corporate trusts. Incidentally the case involved the right of a foreign corporation, duly licensed to do business in Nebraska, to test by injunction proceedings the constitutionality of laws which the Attorney-General of the State asserted he would not enforce. The point was decided in favor of the company on the ground that there is a presumption that the Attorney-General and his assistants must and will enforce the laws. *Contra*, *People* v. *Canal Board* (1874) 55 N. Y. 390. The statutory provision that the charges against the companies involved shall be heard by the State Auditor, although conferring judicial power on an executive official, was upheld, because the defendants were given a right of appeal to the courts.

Passing over these preliminary questions, which do not directly involve the principles of anti-trust laws,—the first provision discussed by the court was that which made the company liable for the prosecuting attorney's fee if defeated in its defense, but gave it no corresponding benefit if successful. So common is this feature in anti-trust legislation that a decision on the validity of this clause would have been of general interest. But the court preferred to decide the case upon other grounds. A Texas statute, having a similar provision in reference to suits for services performed for, or live stock killed by, railroads, was held unconstitutional by the Supreme Court of the United States, because it denied to persons the "equal protection" of the laws. *Railroad Co.* v. *Ellis* (1896) 165 U. S. 150. In the case of a Kansas statute, giving a reasonable sum for an attorney's fee to the plaintiff if he should recover in an action for damages from fire caused by the defendant railroad, but denying the same privilege to the defendant if successful the Supreme Court reached the opposite conclusion. *Railroad Co.* v. *Matthews* (1898) 174 U. S. 96. Corporations are persons within the meaning of the Fourteenth Amendment. *Covington Co.* v. *Sandford* (1896) 164 U. S. 578. The rule on which the *Matthews* and *Ellis* cases are to be reconciled is that, while persons are entitled to the equal protection of the laws, legislation cannot affect all alike. Reasonable clas-